

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge 686 (Boiler Tube Company of America) and Heath Cohen. Case 11-CB-1117

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND ZIMMERMAN

On 28 April 1983 Administrative Law Judge Philip P. McLeod issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and Respondent filed a brief in response to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The issue is whether Respondent, acting through its president, violated Section 8(b)(1)(A) of the Act by threatening employee Heath Cohen with bodily harm because he engaged in protected concerted activities. The Administrative Law Judge recommended dismissal of the complaint. For the following reasons, we disagree.

Respondent and Boiler Tube Company of America entered into their first collective-bargaining agreement for a term from 21 October 1981 through 13 August 1982. Prior to the contract, Boiler Tube employee Heath Cohen served as a shop steward for about 6 months until he was removed from that position by Respondent's president, Robert Ward, because of Cohen's conduct at a union meeting. Cohen resented Ward's action, withdrew from the Union, and encouraged other employees to drop their union memberships and not to support a union strike should one occur during subsequent negotiations.

In July 1982, Cohen went with Union Secretary Hicks Robinson and Union Vice President Gary Wingo to Ward's home for the purpose of resolving the continuing conflict between Cohen and Ward. Ward discussed the possibility of Cohen rejoining the Union. Cohen responded that he wanted to think about it for a few days. He also apologized for having encouraged other employees to drop out of the Union.

Several days after this meeting, Cohen told Ward at the plant that he had decided not to

rejoin, but that he would support the Union in the event of a strike by not crossing a picket line as long as he was financially able to do so. According to Cohen, Ward replied, "Well, you know who ever cross [sic] the picket line, somebody's going to get hurt." Ward denied making such a remark.¹

On 20 August 1982 Cohen went to the Sundance Lounge where he happened upon Robinson, Wingo, and Ward having a drink together. When Cohen seated himself at a table next to the trio, Ward said to him, "You see that door?" Cohen asked, "What door?" to which Ward responded, "The door you came in." When Cohen replied, "What about it? Did I leave it open?" Ward said, "Nah, Nah, if I was you, I'd get the hell out of it." Wingo and Robinson got ready to leave, and Ward told them that they did not have to leave because of him, and that he was wrong to have told Cohen to leave the bar. Then, Ward got up and headed towards the restroom, telling Wingo as he passed by, "I ought to whip his [Cohen's] ass." At some point Cohen said to Ward, "Bobby, do you have a minute, I'd love to talk to you." After Wingo and Robinson had gone and Ward returned from the restroom, Cohen asked Ward why Ward hated him so much and remained angry with him. Ward admitted that he told Cohen, ". . . I ought to whip your ass, Heath, for coming over there at my house as a guest and friend and doing like you do, this lying . . . it's not the idea that you are not a union member. It's the idea of you coming over there and lying to me like that, wasting my time. . . ." Ward continued by telling Cohen that he was tired of negotiating on behalf of employees like Cohen when Cohen was simultaneously making plans with his coworkers to remain on the job in the event there was a strike. Next, Ward accused Cohen of beating his wife and ultimately offered to go outside with him to settle their dispute. Cohen said, "Well, Bobby, that ain't going to do no good . . . either you're going to whip my ass or I'm going to whip yours." Ward retorted, "Well, the best thing for us to do is not cross each other's path again because if we do then, somebody's going to get hurt." Shortly thereafter Cohen left the bar.²

¹ The Administrative Law Judge did not resolve the credibility issue inherent in this account but found that, even if Cohen were credited, the statement would not constitute a violative threat. In view of our finding that Ward unlawfully threatened Cohen in a subsequent conversation, *infra*, we find it unnecessary to resolve the credibility dispute or to rely upon the Administrative Law Judge's conclusion as to this incident.

² The account of the Sundance Lounge incident represents a synthesis of uncontroverted statements and findings by the Administrative Law Judge with respect to the testimony of Cohen, Ward, and Wingo.

The Administrative Law Judge concluded that Respondent had not threatened Cohen with physical harm at the Sundance Lounge in violation of Section 8(b)(1)(A) of the Act and recommended dismissal of the complaint in its entirety. The Administrative Law Judge found that the conflict between Cohen and Ward was "largely Cohen's fault" because Cohen had provoked Ward by resigning his membership in the Union, soliciting strikebreakers, seating himself next to Ward at the Sundance Lounge, and asking to speak with Ward when he returned from the restroom. All of Cohen's actions, according to the Administrative Law Judge, justified Ward's responses. Further, he concluded that Ward's parting statement to Cohen, about avoiding injury by not crossing paths, was ambiguous and that Respondent was entitled to receive a construction of those words most favorable to it. We disagree.

A union violates Section 8(b)(1)(A) of the Act by restraining or coercing an employee because of an employee's dissident union activities,³ decision not to support a strike,⁴ or nonmembership in a union.⁵ Cohen was clearly engaged in protected concerted activities when he withdrew his union membership, encouraged others to abandon the Union, and solicited potential strikebreakers. Moreover, although the manner in which Cohen pursued these activities may have been particularly nettlesome to Ward and Respondent, Cohen did nothing to warrant removal of the Act's protection. Consequently, the test of Ward's conduct—irrespective of subjective intent, provocation, or actual effect—is whether it reasonably tended to coerce Cohen in the exercise of his Section 7 rights. Contrary to the Administrative Law Judge, we perceive no ambiguity in the objective meaning of the conduct at issue. We find an unmistakable nexus between Ward's repeated comments about physical confrontation and the ongoing dispute with Cohen's protected concerted activities against the Union. In this context, Ward's conduct reasonably tended to coerce Cohen in the exercise of his Section 7 rights and violated Section 8(b)(1)(A) of the Act.

THE REMEDY

Having found that Respondent has violated Section 8(b)(1)(A) of the Act, we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

³ E.g., *East Texas Motor Freight*, 262 NLRB 868 (1982).

⁴ E.g., *Laborers Local 383 (Carter-Glogau Laboratories)*, 260 NLRB 1340 (1982).

⁵ E.g., *Boilermakers Local 27 (Daniel Construction)*, 266 NLRB 602 (1983).

CONCLUSIONS OF LAW

1. Boiler Tube Company of America is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge 686, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening Heath Cohen with physical harm, Respondent violated Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge 686, Spartanburg, South Carolina, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing its members and employees of Boiler Tube Company of America in the exercise of their Section 7 rights by threatening them with physical violence.

(b) In any like or related manner restraining or coercing members and employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at all of its offices copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

MEMBER JENKINS, dissenting:

For the reasons expressed by the Administrative Law Judge, I would dismiss the complaint in its entirety.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT threaten our members or employees of Boiler Tube Company of America with physical violence because they have engaged in protected concerted activities under the Act.

WE WILL NOT in any like or related manner restrain or coerce our members or employees of Boiler Tube Company of America in the exercise of rights guaranteed employees by Section 7 of the National Labor Relations Act, as amended.

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIPBUILDERS,
BLACKSMITHS, FORGERS AND HELP-
ERS, LOCAL LODGE 686

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge: On September 13, 1982, a charge was filed in Case 11-CB-1117 against International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge 686,¹ herein called Respondent, by Heath Cohen, an individual. That charge was subsequently amended on October 27, 1982. On October 28, 1982, a complaint and notice of hearing was issued alleging that Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, herein called the Act, by threatening Cohen with physical harm if he crossed a picket line in the event a strike should take place.

In its answer to the complaint, Respondent admitted certain allegations, including the filing and serving of the charge, the status of Boiler Tube Company of America as an employer within the meaning of the Act, its own status as a labor organization, and the status of certain individuals as agents of Respondent. Respondent also admitted that it has been, and is, party to a collective-bargaining agreement with Boiler Tube Company of America as the exclusive bargaining representative of its production and maintenance employees. Respondent denies, however, that it threatened Cohen with physical harm in the event he or other employees crossed a picket line if a strike should take place. Respondent also denies having

engaged in any conduct which would constitute an unfair labor practice.

A hearing was held before me on January 12, 1983, in Spartanburg, South Carolina, at which all parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. At the close of the hearing herein, counsel for the Charging Party chose to argue orally. After the close of the hearing, counsel for the General Counsel and counsel for Respondent filed timely briefs with me. Both the briefs and the oral argument have been duly considered in reaching my decision herein.

Upon the entire record in this case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Boiler Tube Company of America, herein called the Employer, is a Pennsylvania corporation with a facility in Spartanburg, South Carolina, where it is engaged in the manufacture of metal tubes. During the preceding 12 months, which period is representative of all times material herein, the Employer received goods and raw materials directly from outside the State of South Carolina valued in excess of \$50,000 and, during the same period, sold and shipped goods directly to points outside the State of South Carolina valued in excess of \$50,000.

I find that the Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge 686, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

Since at least October 1981 and continuing to the present, Respondent and the Employer have been parties to successive annual collective-bargaining agreements. Robert Ward, who has been Respondent's president for about the last 4 years, has worked for the Employer for more than 7 years and is now a crew leader in the weld shop. This case relates to a confrontation between Ward and employee Heath Cohen, the Charging Party. Cohen has been employed by the Employer for approximately 6 years. Cohen has in the past belonged to the Union, and for approximately 6 months in 1981 served as a shop steward.

In September 1981, Ward removed Cohen from his position as shop steward as a result of Cohen's conduct at a union meeting. During that meeting J. W. Moore, a representative of Respondent's international organization, was addressing Respondent's members reviewing contract negotiations which were then in progress with the Employer. Cohen was talking aloud to other members of the audience during Moore's presentation. After this meeting, Ward discussed Cohen's conduct with other

¹ The correct designation of Respondent appears as amended at the trial herein.

union officers. A joint decision was made to remove Cohen from the steward position, and Ward notified Cohen of the action.

Cohen was extremely hurt by Respondent's decision to remove him from the position as steward. Cohen's father had himself been a steward of the Union in the past. Cohen's brother-in-law, Gary Wingo, is Respondent's vice president. After he was removed as steward, Cohen even refused to return his union steward pin to Ward. Hicks Robinson, Respondent's secretary, who is a personal friend of both Wingo and Cohen, testified credibly that, in a conversation he had with Cohen after his removal as steward, Cohen told him that the position had meant a lot to him, that he was upset with Ward, and that he was going to get back at Ward. After Cohen was removed as steward, Cohen decided to, and did, drop his membership in the Union. Cohen also began to attempt to talk other employees into dropping out of the Union, and Cohen was at least marginally successful.

In July 1982, John Raisch, who then worked for the Employer, had several conversations with Cohen about resolving his differences with Ward. Raisch, who worked in the same department with Cohen, encouraged Cohen to put aside the personal differences between him and Ward and try to get together and work as a group. Cohen asked Raisch to speak to the union membership in his behalf in an effort to resolve the differences. At the union meeting in July 1982, Raisch stood up and made an appeal for harmony. Although no one expressed disagreement with Raisch's remarks, nothing specific resulted at that meeting.

At or about the same time that Raisch spoke to Cohen, Gary Wingo and Hicks Robinson spoke to Ward. Wingo and Robinson told Ward that it would be better for everyone if he and Cohen were able to resolve their differences and get Cohen to rejoin the Union. Ward expressed a desire to resolve any problems with Cohen, and he arranged with Wingo and Robinson to invite Cohen to his home to try to ease Cohen's bitterness toward him and the Union. The meeting did take place with Ward, Cohen, Wingo, and Robinson all present. Ward discussed with Cohen the possibility that Cohen might rejoin the Union. During the meeting, Cohen apologized to Ward for having told other members of Respondent that Ward had been wrong to remove him as steward and for having encouraged other members to drop out of the Union. Cohen, however, told Ward that he did not want to rejoin the Union immediately, that he first wanted to think about it for a few days. Although Cohen did not rejoin the Union, this meeting ended as it had begun, on a friendly note.

A few days after the meeting at Ward's home, Ward and Cohen had a brief discussion at the Employer's facility during a change of shifts. Cohen approached Ward and told Ward that he had decided not to rejoin the Union, that he had talked over the situation with a few of his friends and they were not too interested, and that he did not think the shop where he worked was generally in favor of the Union and as a result he had decided not to rejoin. Cohen testified that he told Ward, however, that if the Union ever went on strike he would respect the picket line as long as he was financially able to

do so, but that when he became "broke" he would have to cross the picket line and go back to work. According to Cohen, Ward replied, "Well, you know who ever cross the picket line, somebody's going to get hurt." Cohen testified he responded, "Well, I got to be prepared to get hurt or hurt somebody." The conversation terminated. Ward emphatically denied discussing picket lines with Cohen during this conversation, much less the possibility that someone might get hurt trying to cross one. Ward testified that, during the discussion between him, Cohen, Wingo, and Robinson at Ward's home, there was some discussion about picket lines, but no threats were directed at Cohen. According to Ward, during the conversation at his home, everyone present did discuss the possibility that violence can result "anytime you have a strike." I find it unnecessary to resolve the credibility conflict between Cohen and Ward because, for reasons explained below, even if Ward made the statement attributed to him by Cohen, it does not rise to a violation of the Act.

On August 20, 1982, Ward and Cohen met by chance at a local bar called the Sundance Lounge. Ward, Wingo, and Robinson were there together having a beer. Cohen came in after noticing Robinson's car in the parking lot. Testimony by Cohen, Ward, Wingo, and Robinson about what took place differs somewhat, but not significantly. Cohen testified that after he sat down at the table next to Ward, Ward leaned over and asked Cohen, "You see that door?" Cohen looked around and said, "What door?" Ward said, "The door you came in." Cohen said, "What about it? Did I leave it open?" Ward said, "Nah, Nah, if I was you, I'd get the hell out of it." Cohen responded that he had ordered a drink and he was going to drink it.

Gary Wingo and Hicks Robinson left. Ward went to the restroom. As Ward was walking to the restroom, Cohen said to him, "Bobby, do you have a minute, I'd love to talk to you." Cohen's testimony about what transpired after Ward returned from the restroom is as follows:

Well, he went to the restroom and he come back out and he sat at the table with me. And I asked him, I said, Bobby, why is it that you just hate me so much and you stay so mad at me? He said, because you run your damn mouth so much. I said, what you mean? He said, I get tired of going down there negotiating for black son-of-a-bitches like you and you come back and you go back and tell them what you can do if we went out on strike and you could train up and keep the Bench Shop running. I said, well, Bobby I told you, I said, it don't take but just a few to keep the bench shop running. I said that's four men. He waited around and talked a little bit more. He began to talk about, I was a poor excuse for a father and a husband and it was a shame a man beat his wife because he goes out and signs a bill for somebody else and they stick him with a \$200.00 bill. I said, what you talking about? He said, you know what I'm talking about. You jumped on your wife. She ain't staying with you now, is she? I said, nah, she's not at home. He said,

that's what I'm talking about. I said, she's gone to Virginia with her mother to visit their sick aunt. He offered to take me outside. He said, let's go outside and settle this. We can straighten it out right now. I said, well Bobby, that ain't going to do no good. I said, either you're going to whip my ass or I'm going to whip yours. Then he said, well the best thing for us to do is not cross each other's path again because if we do then, somebody's going to get hurt. Then I just chugged my draft and left.

Q. What if anything else did Mr. Ward say after he said that somebody was going to get hurt?

A. He got up and moved to the bar and I got on out the door.

Ward admits that, as Cohen approached the table where he, Wingo, and Robinson were seated, Ward said to Cohen, "Get your ass back out that door like you come in." Cohen, however, sat down at a table next to Ward's and ordered a drink. Ward then got up and headed toward the restroom, telling Wingo as he passed by, "I ought to whip his [Cohen's] ass." Ward continued to the restroom. Shortly thereafter, Wingo and Robinson got up and left the bar. When Ward returned from the restroom, Cohen approached Ward and said he wanted to talk to him. Ward admitted that the following then took place:

I said, I ought to whip your ass, Heath, for coming over there at my house as a guest and friend and doing like you do, this lying. He said, well you know, says, I know I was wrong, by doing it, and I said, it's not the idea that you are not a union member. It's the idea of you coming over there and lying to me like that, wasting my time when I could've been spending it with my wife and them somewhere.

* * * * *

This other boy over at the bar, he called over there to him.² He said, leave him alone, says, he ain't worth it. He was in here the other night and about got in a fight.

* * * * *

Heath went on out the door after he finished his draft. I was standing 30 yards from him.

The testimony of Cohen and Ward differs in one other minor respect. Cohen testified that, after Ward told him to get out of the bar, Ward turned to Wingo and Robinson and said, "Well, I guess I shouldn't have said nothing. I was wrong." Ward testified he made that statement the next day at the Employer's facility. On this point, however, Wingo tended to confirm Cohen. Wingo, whom I credit, testified that, as he and Robinson were finishing their drinks and were preparing to leave,

² Although this quoted testimony suggests that the individual at the bar was speaking to Cohen, it was clear during Ward's testimony that Ward was saying the individual at the bar was addressing Ward, not Cohen.

Ward stated they did not have to leave because of him, that he should not have made the remark he did to Cohen about leaving the bar. According to Wingo, Ward acknowledged he was wrong for saying that and told Wingo and Robinson they did not have to leave because of him. It is entirely possible that Wingo and Robinson were finishing their drinks and preparing to leave as Ward returned from the restroom. It is just as possible that Ward made this apology immediately after the original statement to Cohen and before he actually left the table to go to the restroom. The timing of this apology is not critical, and I need not decide precisely when it was made. The significance simply is that, almost immediately after Ward told Cohen in a menacing tone that Cohen should leave the bar, he recognized his error, and in the presence of Cohen apologized for it to Wingo and Robinson.

Later the same evening as the confrontation at the Sundance Lounge, Cohen went to Wingo's house. Cohen, Wingo, and Wingo's other brother-in-law went to Robinson's house to visit. While they were there, Cohen told Robinson and Wingo his version of what happened earlier at the Sundance bar. Robinson, whom I credit, testified that Cohen then stated that he would like to get his mother-in-law's boyfriend to let him borrow his gun because Cohen really would like to shoot Ward.

IV. ANALYSIS AND CONCLUSIONS

Counsel for the General Counsel argues that Respondent has violated Section 8(b)(1)(A) of the Act by Ward's threatening Cohen with physical violence during the conversation at the Sundance Lounge. The cases cited and relied on by counsel for the General Counsel, however, are not particularly helpful.³ Some have nothing whatever to do with the issue before me, but rather relate to a union's threat to cause the discharge of employees for failing to join the union. The cases which involve threats of violence also involve incidents of actual violence and most take place in the context of actual picketing. Simply stated, they are picket line violence cases, which I find to be qualitatively different from the case at hand.

Regarding the change-of-shift conversation at the Employer's facility, even if I were to credit Cohen, I find that the statement attributed by him to Ward does not constitute a violation of the Act.⁴ The statement was am-

³ To the extent it has some peripheral relevance to their interpersonal relationships, I note that Cohen, Wingo, and Robinson are black. Ward is white. While noting that racial difference may tend to put certain things in context, including one of the statements attributed by Cohen to Ward at the Sundance Lounge, I find this difference to have no bearing on the outcome of this case, particularly since the complaint does not allege, and the General Counsel does not argue in favor of, any violation being found against Respondent for having breached its duty of fair representation. The sole theory framed by the complaint and advanced in counsel for the General Counsel's brief is that Respondent violated the Act by Ward's alleged threat of physical violence.

⁴ Cohen has filed a civil suit in South Carolina state court against Respondent seeking damages of \$450,000 for alleged threats and harassment by the Union, including Ward's alleged statements to Cohen described herein. Because I am convinced that, even if Ward made the statements attributed to him by Cohen those statements do not rise to a violation of the Act, I view it as important that I not make unnecessary credibility resolutions which might improperly influence the outcome of that proceeding.

biguous on its face and did not constitute a clear or real threat to Cohen.

Regarding the exchange between Ward and Cohen at the Sundance Lounge, I note that, according to both the version given by Cohen and that given by Ward, Cohen's lack of union membership was not the primary subject of Ward's verbal attack on Cohen. By Cohen's version, Ward was angry because Cohen had been soliciting other employees in his department to be strikebreakers with him in the event of a strike. Cohen had apparently let it be known that in the event of a strike he could train other employees and thereby keep his department running. By Cohen's own version, he did not deny encouraging other employees to be strikebreakers with him, but rather impliedly admitted doing so by responding to Ward, "[W]ell, Bobby, it don't take but just a few to keep the bench shop running. That's four men."

By Ward's version, it is also clear that Cohen's lack of membership in the Union was not the primary cause of Ward's verbal attack on Cohen. Rather, it was Ward's perception that Cohen had lied to him and wasted his time by coming to his house with Wingo and Robinson when Cohen had no intention of rejoining the Union.

From all the facts, it is apparent that the conflict between Ward and Cohen is largely Cohen's fault, resulting from Cohen's bitterness toward Ward for removing him as union steward (which clearly Ward had the right to do), and incited by Cohen's attempt to gain retribution by undermining both Ward and the Union. Ward's remarks to Cohen stem primarily from Cohen's provocation. Cohen's campaign to undermine Ward and the Union is clear from this record. After Cohen was removed as steward, he resigned membership in the Union but has steadfastly refused to return his steward pin. After resigning, he encouraged and solicited others to resign. Although he apologized to Ward for these actions, Cohen, by his own testimony, apparently turned around and solicited other employees to be strikebreakers with him in the event of a strike, this after he had told Ward he would support a strike until he was "broke." Cohen also contributed directly to the confrontation at the Sundance Lounge by deliberately seating himself at the table next to Ward. While Ward initiated the actual confrontation, Ward also apologized for doing so and attempted to avert further confrontation by leaving to go to the restroom. After Ward went to the restroom, and although Cohen knew Ward was angry, it was Cohen who invited further confrontation by approaching Ward. Cohen's campaign of retribution and provocation has apparently not ended, as revealed by Cohen's remark sev-

eral hours after the incident at the Sundance Lounge that he ought to get a gun and shoot Ward. In view of all the above, I find that, even if I were to credit Cohen regarding the statements attributed by him to Ward, Ward's actions do not constitute a violation of Section 8(b)(1)(A) of the Act. See *New York City Taxi Drivers Local 3036 (Taxi Maintenance Corp.)*, 231 NLRB 965 (1977); *Hotel & Restaurant Employees Local 466 (Treadway Inn)*, 191 NLRB 528 (1971).⁵

In reaching my ultimate conclusion herein, I have also given careful consideration to Cohen's testimony regarding Ward's parting words to him at the Sundance Lounge. According to Cohen, Ward told him, "[W]ell, the best thing for us to do is not to cross each other's path again because if we do then, somebody's going to get hurt." One interpretation that can be given this statement is the one argued for by counsel for the General Counsel and the Charging Party that Ward was threatening to hurt Cohen. An equally plausible interpretation of Ward's parting words is that it was a plea to avoid further confrontation by staying out of each other's way. I am inclined to believe that not only is the latter interpretation possible but, in this case, correct. Whether that interpretation is correct or not, however, since the statement is subject to different interpretations, one purely innocent, I find that it did not violate Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Boiler Tube Company of America is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge 686, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act by the conduct alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]

⁵ I note in passing that there is no allegation herein to the effect that Respondent, through Ward, has in any way failed to fairly represent Cohen in any dispute Cohen might have with the Employer. While such a failure to represent Cohen because of the conflict between Ward and Cohen might well constitute an unfair labor practice, the existence of the conflict itself cannot be prohibited or controlled by the Board or the Act, particularly where the conflict is largely the result of provocation by the Charging Party. In its simplest terms, however, this case attempts to do just that.